



UNIVERSITY of  
DENVER

STURM COLLEGE OF LAW  
Clinical Programs

**Environmental Law Clinic**

*Student Law Offices*  
2255 East Evans Avenue  
Suite 335  
Denver, Colorado 80208

303-871-6140

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**BY ELECTRONIC MAIL/PDF**

Tennille Begay  
NAQCP/OPP  
P.O. Box 529  
Fort Defiance, AZ 86504  
Email: [airquality@navajo-nsn.gov](mailto:airquality@navajo-nsn.gov)

Lisa Beckham (AIR-3)  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105-3901  
Email: [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov)

**Re: Proposed Renewal of Acid Rain Permit for the Four Corners Steam Electric Station**

Dear Ms. Begay:

These comments are provided on the behalf of To' Nizhoni Ani and Black Mesa Water Coalition (collectively, tribal conservation organizations). The tribal conservation organizations appreciate this opportunity to comment on the draft renewal Acid Rain Permit for the Four Corners Steam Electric Station ("Four Corners") and are primarily concerned with the Tribe's waiver of regulatory jurisdiction under the Four Corners site lease agreement. Specifically, the organizations are *highly* concerned that the Navajo Nation has contracted away its right to regulate Four Corners and therefore has no regulatory authority to issue, let alone enforce, the Acid Rain Permit.

The Navajo Nation made an "unmistakable waiver" of its right to regulate Four Corners in 1960, over 50 years ago, when it leased the facility to the various Four Corners owners and operators. *Arizona Pub. Serv. Co. v. Aspaas*, 77 F.3d 1128, 1130-35 (9th Cir. 1995). The "non-regulation covenant" for Four Corners states, "The Tribe covenants that . . . it will not directly or indirectly regulate or attempt to regulate the Company or the construction, maintenance or operation of the power

plant and transmission system by the Company . . .” *Id.* at 1131. The lease amendments issued in 1966 and 1985 did not change this waiver of regulatory jurisdiction. *Id.* at 1130. As a result, the Navajo Nation does not have the authority to issue an Acid Rain Permit for Four Corners because to do so would constitute the direct or indirect regulation of operations of the power plant.

Moreover, and even if the Tribe were to issue an Acid Rain Permit, the Navajo Nation’s waiver by contract of regulatory jurisdiction over Four Corners removes the Tribe’s power to enforce the permit, if it were violated.

For this reason, U.S. Environmental Protection Agency (“USEPA”), not the Navajo Nation, is the proper entity to regulate NGS and issue the Acid Rain Permit to Four Corners. Because the Navajo Nation does not have regulatory authority, the NNEPA may not issue an Acid Rain Permit to Four Corners.

Unless and until the site lease for Four Corners is modified to give the Navajo Nation regulatory jurisdiction over the power plant, USEPA must suspend or revoke any delegated authority to the Navajo Nation to issue permits and assume the regulatory responsibility. Subsequent USEPA permitting should include re-noticing the permit for additional public comment.

If you have any questions concerning these comments, please con.

Sincerely,

s/Brad A. Bartlett

Brad Bartlett, Assistant Professor  
Shannon Hughes, Student Attorney  
Ashley Basta, Student Attorney  
Mallory Kindsfather, Student Attorney  
University of Denver  
Environmental Law Clinic  
2225 E. Evans Ave., Suite 335  
Denver, CO 80208  
Phone: (303) 871-7870

Copy: Nicole Horseherder, To’ Nizhoni Ani  
Jihan Gearon, Black Mesa Water Coalition